

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

v.

Criminal Case No. 17-20471

Kenyatta Mickel,

Defendant.

Sean F. Cox
United States District Court Judge

/

OPINION & ORDER
DENYING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

In this criminal action, Defendant Kenyatta Mickel (“Defendant”) was convicted of a drug offense and was sentenced to 46 months’ imprisonment. The matter is before the Court on Defendant’s Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A), which is based upon concerns about the ongoing novel coronavirus pandemic (“COVID-19”). This motion asks the Court to allow Defendant to serve the remainder of his sentence at home because he is concerned that he could contract the virus, and that he may be vulnerable to severe illness if he were to contract it because of his medical conditions. The Court concludes that a hearing is not warranted and orders that the motion will be decided based upon the briefs. As explained below, the Court shall DENY the motion.

BACKGROUND

In this criminal case, Defendant pleaded guilty to Conspiracy to Possess with Intent to Distribute and to Distribute Controlled Substances, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C). This Court sentenced Defendant to a below-guidelines sentence of 46 months’

imprisonment.¹

Defendant is 34 years old. Defendant filed his Motion for Compassionate Release asserting that he is at heightened risk of more serious illness, if he were to contract COVID-19, because he previously had heart surgery.

The Government asserts that it is arguable whether Defendant has properly exhausted his administrative remedies but asks the Court to resolve the motion on the merits. The Government notes that Defendant's heart surgery was a surgery he had as a child, back in 1988. The Government notes that no issues regarding Defendant's heart were noted in the PSR completed in this case in 2018. It also contends that Defendant's medical records since he has been in custody to not reflect any medical conditions that put him at increased risk.

ANALYSIS

Defendant's Motion for Compassionate Release is brought under 18 U.S.C. §3582(c)(1)(A) and asks this Court to allow him to serve the remainder of his sentence in home confinement.

Under 18 U.S.C. § 3582(c)(1)(A), the Court may reduce an imposed sentence if it determines that "extraordinary and compelling reasons warrant such a reduction." On top of making this finding, the Court must also consider the sentencing factors described in 18 U.S.C. § 3553(a) and decide if a sentence reduction would be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

U.S. Sentencing Guidelines Manual § 1B1.13 (U.S. Sentencing Comm'n 2018) is the "applicable policy statement" with which the Court must comply when considering Defendant's

¹The guidelines provided for a sentence of 63 to 78 months' imprisonment.

request for compassionate release. 18 U.S.C. § 3582(c)(1)(A). Section 1B1.13 explains that a defendant must “not [be] a danger to the safety of any other person or to the community” under 18 U.S.C. § 3142(g) **and** must fit within at least one of four categories of “extraordinary and compelling reasons.” Those categories are: “Medical Condition of the Defendant,” “Age of the Defendant,” “Family Circumstances,” and “Other Reasons.”

In sum, a defendant seeking compassionate release must present extraordinary and compelling circumstances, must have § 3553(a)’s sentencing factors weigh in his favor, must not be a threat to others as determined by § 3142(g), and must fit within one of the four categories in § 1B.13 of the Sentencing Guidelines.” *United States v. Shah*, 2020 WL 1934930 at *1 (E.D. Mich. April 22, 2020) (citations omitted). *United States v. Murphy*, 2020 WL 2507619 at *3-4 (E.D. Mich. May 15, 2020).

Here, Defendant is a 34-year-old man in general good health. The record reflects that, decades ago, he had a successful heart surgery as an 18-month-old child. There is nothing in Defendant’s medical records that would indicate Defendant is among those persons who are at a heightened risk of the more serious complications associated with COVID-19. Thus, Defendant has not satisfied the first eligibility threshold for compassionate release during this pandemic.

In addition, the Government persuasively argues that Defendant is ineligible for compassionate release because he is a danger to the community. Section 1B1.13(2) permits release only if a “defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” The record does not support such a finding in this case, where Defendant engaged in a six-month spree of pharmacy break-ins to steal controlled substances.

The § 3553(a) factors, including Defendant's history and characteristics, seriousness of the offense, promoting respect for the law, and providing just punishment also weigh against Defendant's request for compassionate release. Defendant's criminal conduct was serious and allowing Defendant to be released after only serving approximately half of his already below-the-guidelines sentence would not promote respect for the law or proper deterrence, provide just punishment, and avoid unwanted sentencing disparities. This Court concludes that Defendant is not an appropriate candidate for the extraordinary remedy of compassionate release.

CONCLUSION & ORDER

For the reasons set forth above, **IT IS ORDERED** that Defendant's Motion for Compassionate Release is **DENIED**.

IT IS SO ORDERED.

s/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: October 27, 2020